

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

U.S. WATER SERVICES, INC. and
ROY JOHNSON,

Plaintiffs,

v.

NOVOZYMES A/S and NOVOZYMES NORTH
AMERICA, INC.,

Defendants.

Case No. 3:13-cv-00864-jdp

**NOVOZYMES' MOTION FOR LEAVE TO FILE
OBJECTIONS TO PLAINTIFFS' IMPROPER REPLY BRIEF,
MOTION TO STRIKE, AND SUPPLEMENTAL DECLARATION**

PUBLIC REDACTED VERSION

Defendants Novozymes A/S and Novozymes North America, Inc. (collectively, “Novozymes”) respectfully move the Court for leave to file objections to and a motion to strike portions of U.S. Water’s Reply in Support of its Motion for Permanent Injunctive Relief and an Enhanced Royalty on Post-Judgment Sales (Dkt. No. 881), and for leave to submit a supplemental declaration of Jack Rogers to address a factually incorrect assertion made in U.S. Water’s improper reply.

I. OBJECTIONS TO U.S. WATER’S REPLY

Novozymes respectfully requests leave to file objections to U.S. Water’s reply on two grounds. First, this Court’s rules do not allow for reply briefs in the context of motions for injunctive relief. *See* Procedure to Be Followed on Motions for Injunctive Relief at 2 (“There shall be no reply by the movant.”).¹ Novozymes objects to U.S. Water’s belated effort to use a reply brief to attempt to provide support for its requested relief when that support was not included in its opening brief, as U.S. Water’s reply brief is expressly prohibited by the Court’s rules. Second, Novozymes objects to specific arguments raised by U.S. Water for the first time in its reply brief, and requests that they be stricken. *See Boyer v. Weyerhaeuser Co.*, Nos. 14-cv-286-wmc et al., 2016 WL 2619439, at *1 n.1 (W.D. Wis. May 5, 2016) (striking portions of reply brief raising new arguments); *Porco v. Trustees of Indiana Univ.*, 453 F.3d 390, 395 (7th Cir. 2006) (explaining that arguments appearing for the first time in a reply brief are waived).

Novozymes’ objections and motion to strike are attached hereto as **Exhibit A**.

II. NOVOZYMES SHOULD BE PERMITTED TO FILE A SUPPLEMENTAL DECLARATION

One of the new arguments to which Novozymes objects is U.S. Water’s allegation that “sales of phytase from the other alleged infringers on the market are actually sales from

¹ These procedures are available by following the Motions for Injunctive Relief link at <http://www.wiwd.uscourts.gov/local-rules>.

Novozymes” because [REDACTED]

[REDACTED] Dkt. No. 881, U.S. Water Reply at 16 n.8. If this new argument is not stricken, Novozymes respectfully requests permission to file a supplemental declaration to address this allegation. As Novozymes’ discovery responses (quoted by U.S. Water) state, [REDACTED]

[REDACTED] The supplemental declaration, attached hereto as **Exhibit B**, clarifies that all [REDACTED] are reflected in Novozymes’ sales data as produced to U.S. Water.

III. CONCLUSION

For these reasons, Novozymes requests leave to file objections to U.S. Water’s improper reply brief in support of its motion for permanent injunctive relief, and requests that if the Court does consider the reply brief, arguments raised for the first time in reply be stricken, and that Novozymes be permitted to submit a supplemental declaration.

Dated: January 16, 2018

Respectfully submitted,

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